

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

KING SOOPERS, INC.,

Employer,

and

Case 27-RC-8272

UNITED FOOD AND COMMERCIAL
WORKERS, LOCAL NO. 7, AFL-CIO,

Petitioner.

DECISION AND DIRECTION OF ELECTION

On August 15, 2003, United Food and Commercial Workers, Local No. 7, AFL-CIO, filed a petition under Section 9(c) of the National Labor Relations Act, seeking to represent certain employees of the Employer employed at Store 11, located at 2100 35th Avenue, Greeley, Colorado. Barbara D. Josserand, a hearing officer of the National Labor Relations Board, conducted a hearing on August 26, 2003. Following the hearing, the parties filed briefs.

The sole issue to be resolved in this case relates to the appropriate scope of the unit. The Petitioner seeks to only represent the employees in Store 11. The Employer contends that, because of the functional integration and close proximity of the stores, the petitioned-for unit is not appropriate and an election must be directed in a unit that includes employees working at Store 11 and Store 32. I conclude for

the reasons fully enunciated below that the petitioned-for unit is not appropriate and that the only appropriate unit must include both Greeley stores.

Under Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing on January 14, 2003 are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of section 2(6) and (7) of the Act and that it is subject to the jurisdiction of the Board. Specifically, the Employer is a corporation engaged in the retail sale of grocery and household products with facilities in various Colorado cities, including Greeley. During the past 12 months, the Employer derived gross revenues in excess of \$500,000 and purchased and received at its Colorado facilities goods or materials valued in excess of \$5,000 directly from points and places located outside the State of Colorado.

3. The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

5. It is appropriate to direct an election in the following unit of employees:¹

INCLUDED: All employees engaged in the handling and selling of merchandise employed by the Employer at Store 11 and Store 32, located in Greeley, Colorado.

EXCLUDED: All store secretaries, represented pharmacists, represented meat and seafood employees, professional employees, demonstrators, guards, store managers, assistant store managers and other supervisors as defined by the Act.

STATEMENT OF THE CASE

1. Facts

A. Background:

The Employer, King Soopers, Inc., is engaged in the retail grocery industry in the State of Colorado. It currently has about 90 stores, primarily located on what is referred to as the Colorado “front-range.” The Employer has organized its operations into geographic areas, which it refers as “bargaining units”, irrespective of whether those units are actually represented by a union.

The Employer has grouped stores together into “bargaining units” in each of the following geographic areas: Denver metropolitan area, Colorado Springs metropolitan area, Pueblo, Fort Collins, Boulder, Broomfield, Longmont, Loveland, Castle Rock, Monument and Greeley. The Petitioner currently represents multistore

¹ The Petitioner did not state a position on the record or in its post-hearing brief regarding its willingness to proceed to an election in a unit different from that for which it petitioned. In the absence of a stated position, it is assumed that the Petitioner is willing to proceed to an election in any unit determined to be appropriate.

meat and seafood department units and/or multistore, storewide units which exclude meat and seafood departments and pharmacists in some of these geographic areas.² Specifically, the record reflects that the Petitioner represents a two-store unit in Pueblo; a nine or ten store unit in Colorado Springs; and a much larger, multistore-unit in the Denver metropolitan area.³

The Petitioner also currently represents the meat and seafood employees at the two Greeley stores at issue in a combined unit. The record is also silent as to whether the meat and seafood unit involving the two Greeley stores was created by recognition, an election pursuant to a Stipulated Election Agreement, or an election pursuant to Decision and Direction of Election.

B. Employer's Organizational structure

The Employer's corporate headquarters is located at 65 Tejon Street, Denver, Colorado. This headquarters is the central location from which all merchandising, marketing, advertising, purchasing, and labor and employee relations policies and procedures are established. Each individual store budget is also set at the corporate level. The district managers, who directly oversee the stores in their respective districts, monitor the implementation of all corporate policies and individual store budgets. The store budgets are adjusted based upon

² The Employer's pharmacists, including those at the two stores in Greeley, are currently represented in a multistore unit by PACE. Accordingly, the parties stipulated that any appropriate unit should specifically exclude the pharmacists.

³ The record is silent as to whether these multistore units resulted from recognition, stipulated elections, or Board Decisions and Directions of Election.

competitor store openings. Budget adjustments, including employee layoffs, are presently under way for the two Greeley stores because new Safeway and Super Wal-Mart stores have opened in Greeley since January 1, 2003.

The Employer's Vice President of Retail Operations is Dave Savage. His responsibilities include direct involvement in termination decisions for employees with more than five years of service with the Employer.

Stephanie Bouknight is the Employer's Manager of Labor and Employee Relations for both represented and non-union stores. Her responsibilities include involvement in all discipline and termination decisions for employees with more than five years of service and involvement in all termination decisions for employees with less than five years of service. Her department also maintains the seniority lists for each "bargaining unit." Because the Employer bases all promotions, demotions, layoffs and transfers within various bargaining units on strict seniority, the final decisions on employee placement all emanate from the corporate level. The Employer's seniority system, and that system's effect on the scope of unit issues in this proceeding, will be addressed more fully below.

The district manager for the Employer's Northern District is Gary Prickett. His district encompasses stores in the northernmost Denver suburb of Broomfield, north to Cheyenne, Wyoming. This district includes the two Greeley stores. He oversees the merchandise presentation and profitability of the stores in his district. Prickett is also involved in hiring of any managerial employees, including the department managers for the bakery, deli, general merchandise, produce, service counter and

the head clerk. The store managers have the independent discretion to do other hiring, as long as their store is meeting its budget. In the event a store is not operating within the budgetary goals established for it by corporate, hiring decisions must be approved by Prickett. Finally, Prickett is involved in all termination decisions for employees with less than five years of service. He also seeks guidance and approval from Bouknight and/or Savage for employees with more than five years of service.

The store manager for Store 11 is Joe Hernandez. Reporting directly to Hernandez are assistant store manager Carlotta Demianew and store secretary Terri Coatman. Dan Melaragno, is the store manager at Store 32. Reporting directly to Melaragno are assistant store manager Jim McKenna and store secretary Cheryl Rossell.⁴

All of the various department managers also report directly to these store managers. The parties stipulated that the department managers should be included in the bargaining unit because they do not possess or exercise any of the Section 2(11) indicia. Since there is no record evidence contradicting the parties' stipulation regarding the lack of supervisory indicia for the various department managers, I shall include the bakery, deli, general merchandise, produce, and

⁴ The parties stipulated that the store managers and assistant store managers should be excluded from the unit on the basis that they possess and exercise supervisory indicia. The parties further stipulated that, consistent with the other units represented by the Petitioner, the store secretaries should also be excluded from the unit. Based on the support in the record for these stipulations and the past bargaining history of the parties, I shall exclude the store managers, assistant store managers, and store secretaries from the unit.

service counter department managers, and the head clerk in the unit pursuant to that stipulation.

C. Community of Interest Factors

In **Trane, an operating unit of American Standard Companies**, 339 NLRB NO. 106 (2003), citing **R & D Trucking, Inc.**, 327 NLRB 531 (1999) and **J & L Plate, Inc.**, 310 NLRB 429 (1993), the Board listed the community of interest factors which bear on a determination as to whether the single-facility presumption has been rebutted. Specifically, the Board enumerated the following relevant factors: “(1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions and working conditions; (3) the degree of employee interchange; (4) the distance between the locations; and (5) the bargaining history, if any exists.”

The facts applicable to each of these factors will be addressed immediately below.

1. Central control over daily operations and labor relations, including the extent of local autonomy

While the store managers are responsible for the day to day operations of their respective stores, all of the policies and procedures governing employees' wages, hours, and working conditions are set at the corporate level. Similarly, all policies relating to merchandising and product marketing are set at the corporate level. While each store keeps employee personnel records for its own employees, the centralized labor and employee relations department maintains computerized

employee records because it administers all employee movements based on seniority.

With regard to hiring decisions, as noted above, while managerial hiring requires approval from corporate personnel, the record establishes that the store managers have the authority to make hiring decisions for unit employees if they are operating within their respective store's budget. The record establishes that nine of the current parttime courtesy clerks in Store 11 were hired between March 27 and July 6, 2003. Store 32 hired one bakery clerk on May 30, 2003, one checker on April 13, 2003, and one plant floral clerk on January 15, 2003. Again, the record is silent as to whether the store managers of the two Greeley stores at issue had to seek the district manager's authorization for these particular hiring decisions and whether these stores are operating within budget.

Store managers participate in the disciplinary process up to and including terminations, but their authority is somewhat proscribed in that authorization to terminate employees with less than five years of service must be sought from the district manager and authorization to discipline employees with more than five years service even short of discharge must be sought from the district manager and labor and employee relations department. Moreover, at the request of the district manager or the labor and employee relations manager, the vice president of retail operations may participate in termination decisions for employees with more than five years of service. The record establishes that approximately 106 employees of

Stores 11 and 32 have more than five years of service and are therefore directly affected by this policy.

The authority of store managers to set work schedules, vacations, and days off is also somewhat proscribed by the store budget as well as by the “select-a-shift” program which operates on a strict seniority basis. Specifically, the budget determines the number of shifts available and the various department managers determine what shifts need to be covered. The highest seniority employee in that department or work group then selects his shifts. After the most senior employee has made his selection, the opportunity is made available to the next most senior employee and so on down the line until all the shifts are covered. There is no evidence that the store manager has direct involvement in the select-a-shift system or that he overrides the selections of the employees. This select-a-shift system also applies to selecting vacations and days off and is used in both Greeley stores, as well as in all the Employer’s other unrepresented and represented stores.

(2) Similarity of employee skills, functions and working conditions

There is no dispute that the two stores function identically. They both operate 24 hours a day, 7 days a week and sell the same products in the same departmental structure. Both stores employ employees in the same job classifications. The employees all have and exercise the same rights afforded them by the Employer’s unique dovetailed seniority system described below.

The terms and conditions of employment for the employees in Store 11 and 32, as well as all of the Employer’s unrepresented employees, are established at

the corporate level and set forth in a booklet entitled “King Soopers General Conditions of Employment for Union-Free Stores.” Many of the terms of employment are identical to those set forth in the various collective-bargaining agreements between the Employer and Petitioner for the Denver, Colorado Springs, and Pueblo multistore bargaining units. Specifically, the wage rates, wage progressions, and annual increases are identical for represented and unrepresented employees.

The Employer has also established a policy whereby seniority is dovetailed for employees in stores within a geographic area. The geographic areas established by the Employer are noted above. The only Employer-established “geographical bargaining unit” at issue in this matter consists of the two Greeley stores. The nearby cities of Loveland, Fort Collins and Longmont, which are variously located 25-45 miles from Greeley, also have their own “bargaining units” consisting of the all stores in each city. The Employer’s stated basis for its policy of dovetailing seniority within a geographic area is that it provides the Employer the ability to staff its stores under almost all circumstances and also provides greater opportunities for long-term employee advancement to fulltime positions or other promotions employees might seek. Thus, the application of the dovetailed seniority system to the two Greeley stores specifically affects the ability of employees in Stores 11 and 32 to bid on job openings, seek promotions, advance to full time positions, transfer between the two stores, and avoid layoff by bumping less senior employees. This dovetailed seniority system also affects employee recall from layoffs.

The labor and employee relations department prints out dovetailed seniority lists weekly and administers the bumping process when layoffs occur. Thus, if there is a reduction in force, the laid off employee then has the right to exercise his seniority within the bargaining unit, so that if there was a less senior employee at another store in the bargaining unit, the laid off employee can bump the less senior employee to layoff status.

As noted above, the represented and unrepresented stores also all utilize the scheduling system referred to as “select a shift.” This system is not based on the geographic seniority system, but is confined to work groups or departments within each individual store.

(3) The degree of employee interchange

a. Temporary interchange between the Store 11 and Store 32

Both store managers testified that there is some temporary interchange of employees between the two Greeley stores almost weekly. For the most part, however, the record does not establish the nature and duration of such purported weekly interchange. There were, however, several specific examples cited and both Petitioner witnesses confirmed that they were aware of temporary exchanges of employees between the two stores. In particular, Petitioner witness Christina Nance testified that she was aware of use of employees from the other store in the deli. Petitioner employee witness Penny Martinez generally confirmed that she was aware of the temporary interchange of employees from the other store. The specific examples provided in the record include the fact that the floral clerk from Store 11 is

currently working two days a week at Store 32 to cover the ten-week leave of absence of the floral clerk in Store 32. There is also evidence that a deli clerk assigned to Store 32 actually sought and obtained a transfer to Store 11 after being temporarily assigned to work in Store 32. The two store managers also testified that there is temporary interchange between the stores to cover vacation schedules, leaves of absence, unexpected sick leave, store parties, and store picnics if one of the stores cannot cover the absences with its own employees. Finally, there is specific record evidence that Store 32 used a cake decorator from Store 11 this past summer to cover vacations in the bakery department and during the recent graduation season because of a high volume of business.

b. Permanent transfers

Permanent transfers between the two Greeley stores occur in several different ways. One way is through the Employer's so-called "promotional pool" and "fulltime employee advancement" programs. The labor and employee relations department maintains these two lists which it administers on the basis of strict seniority. Employees have an opportunity to sign up for the promotional pool or fulltime advancement list from January 1 through January 15, and July 1 through July 15 each year, and expressly state the specific positions to which they aspire. The labor and employee relations department then enters the employee information into a database and sorts the information by seniority within the bargaining unit (in the case under consideration, the two Greeley stores). As openings become available, the labor and employee relations department checks the database and interested

employees are promoted into the positions based on their seniority. This same system is also used in other unrepresented bargaining units and in bargaining units of represented stores.

If no employees have requested particular openings through the promotion pool or fulltime advancement list, the job openings for Store 11 and Store 32 are then posted in the employee lounges in both stores. Employees in either store can then request a transfer to the other store by filling out a transfer request form. If an employee transfers between stores within a bargaining unit, there is no loss of seniority.

Employees can also express their desire to transfer outside their bargaining unit by filling out an employee transfer request form and then waiting until an opening arises in the store or geographic area to which they seek a transfer. If, however, an employee seeks to transfer to a store in another geographic area, hence another "bargaining unit," the employees within that unit have first opportunity for any job opening. Thus, such transfers between bargaining units generally result in an employee transferring into the lowest level position in the store. After a waiting period of 30 days, the employee establishes seniority within the new bargaining unit, but the transferring employee can only move up in that bargaining unit on the basis of his new seniority within that specific unit.

With regard to permanent transfers, the evidence establishes that there have been nine permanent transfers between Store 11 and Store 32 in the past year. These include promotions, demotions and lateral transfers.

c. Layoffs and exercise of bumping rights

As noted above, the Employer's dovetailed seniority system within a bargaining unit allows employees in one store to bump employees in another store in their bargaining unit on the basis of strict seniority. In February 2002, the Employer closed Store 32 for six weeks to remodel the store. As a result of that temporary store closure, about 27 employees from Store 32 exercised their seniority bumping rights to transfer to positions in Store 11. The remaining employees in Store 32 and displaced Store 11 employees, who lacked the seniority to bump other employees, either were forced into layoff status and elected to take the time off and receive unemployment compensation or found openings in other bargaining units, and transferred into those positions, thereby giving up their seniority rights in the Greeley "bargaining unit."

Currently, because of the competitor store openings referenced above, the two Greeley stores are in the process of laying employees off from various departments. These layoffs have activated the employees' bumping rights. There is no record evidence of how many employees have been or will be affected by employees exercising their bumping rights, although one of the Petitioner witnesses testified that she was demoted from her checker position as a result of the competitor openings, and based on her seniority rights, she elected to take a position in the deli rather than the least senior all-purpose clerk position initially offered to her.

(4) The distance between the locations

The evidence is undisputed that the distance between Store 11 and Store 32 is about two miles.

(5) The bargaining history, if any exists.

There is no history of collective bargaining in the wall-to-wall unit, excluding pharmacists and meat and seafood department employees, for either Store 11 or Store 32. However, there is a long history between this Employer and this Petitioner of bargaining on a citywide, multistore basis. As noted above, the Petitioner already represents a unit consisting of meat and seafood department employees in the two Greeley stores at issue herein.

ANALYSIS

1. Legal Framework

It is well settled that single facility units are presumptively appropriate. As noted above, in *Trane, an Operating Unit of American Standard Companies*, 339 NLRB No 106, a July 29, 2003 decision,⁵ the Board re-stated the community of interest factors relevant to whether the single-facility presumption has been rebutted. In that decision the Board held:

With respect to unit determinations regarding employees at a single versus multilocation units, the Board has long held that a petitioned-for single-facility unit is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated that it has lost its separate identity. *J & L Plate, Inc.*, 310 NLRB 429 (1993). The party opposing the single-facility unit has the heavy burden of rebutting its presumptive appropriateness.

⁵ See also, *Cargill, Inc.*, 336 NLRB No. 118 (2001).

However, in **Trane**, the Board went on to state that it:

... has never held or suggested that to rebut the presumption a party must proffer 'overwhelming evidence . . . illustrating the complete submersion of the interests of employees at the single store,' nor is it necessary to show that 'the separate interests' of the employees sought have been 'obliterated.' **Petrie Stores Corp.**, 266 NLRB 75, 76 (1983).

The Board engages in a case-by-case balancing test between the five factors cited above to determine whether the single facility presumption has been rebutted. In this regard, the Board in **Waste Management of Washington, Inc.**, 331 NLRB 309 (2000), in reversing a Regional Director's decision and finding that the single plant presumption had been rebutted stated:

We find that the functional integration of the Employer's operations; centralized control over personnel and labor relations policies; lack of local autonomy and common supervision of employees at both locations, identical skills, duties and other terms and conditions of employment; and the evidence of interaction and coordination between the two groups outweighs two factors which would favor the single-facility presumption – the 42-mile geographical distance between the two locations and the Employer's failure to introduce relevant affirmative evidence demonstrating more than minimal interchange. [Citations omitted.]

2. Unit Determination

I conclude that the Employer has met its burden of rebutting the presumption favoring single facility units, and I shall direct an election in the two-store unit proposed by the Employer. Initially, I note that the factors regarding similarity of employee skills, functions and working conditions and distance between the locations fully support a finding that the single facility presumption has been rebutted. In this regard, there is no dispute that the employees in Store 11 and

Store 32 share identical benefits, perform the same duties in the same departments within the two stores, and that the stores are located within about two miles of each other.

With regard to the degree of employee interchange, I also conclude that the evidence supports my finding that the single facility presumption has been rebutted. I note that by dovetailing the seniority of the employees in the two stores (a system that has been long established in Greeley as well as in the Employer's other represented and unrepresented bargaining units), the Employer has merged the two stores in a way that has a significant effect on major terms and conditions of employment including promotions, transfers and layoffs. Moreover, this is not just a "paper system", but one that has been utilized in the past year and a half by approximately 40 employees. Additionally, as regards this factor, I note that in two recent cases, the Board placed emphasis on whether the employees in the facilities at issue had the ability to bid on jobs in the other location; a factor that is present herein both because of the dovetailed seniority system and the fact that job openings in either store are posted in both stores. Thus, in **R&D Trucking**, supra at 533, in reversing the Regional Director and finding that the single facility presumption had been rebutted, the Board stated, "Moreover, before the Employer hired employees to serve the newly reacquired Textron account, it offered that work to drivers at the Interstate facility." In **Cargill**, supra, in finding that the presumption had not been rebutted, the Board stated, "There is no evidence of permanent transfers of employees between facilities, and employees at one facility do not bid on job openings at the other facility."

With regard to bargaining history, I conclude that this factor also generally supports my finding that the single facility presumption has been rebutted. In doing so, I am mindful that when the Board looks at bargaining history, it typically is looking at bargaining history in the actual unit at issue. See, e.g., **Canal Carting, Inc.**, 339 NLRB No 121 (2003), and the cases cited therein. I am also cognizant of the fact that the Board does not find bargaining history in recognized or stipulated units to be dispositive, but rather, is bound only by units based on Board-directed elections. See, e.g., **Coplay Cement Company**, 288 NLRB 66 (1988). Nevertheless, the fact that the Petitioner herein has acquiesced to bargaining units structured on a geographic basis by this Employer, including combining the meat and seafood employees into a one unit at the two stores under consideration, favors a combined unit of the two Greeley stores for the remaining employees.

As to the final factor to be analyzed, central control over daily operations and labor relations, including the extent of local autonomy, I conclude that, while there is no dispute that the day-to-day operations at each store are overseen by the respective store managers and their assistant managers and such daily supervision is relevant to the issue under consideration, this is outweighed by the other factors discussed above that favor a finding that the single store presumption has been rebutted.⁶ Moreover, although each store at issue has local supervision, the evidence establishes that there is a high degree of central control over labor

⁶ In numerous cases the Board has found that the single facility presumption has been rebutted, notwithstanding separate on-site supervision. See, e.g., **Neodata Product/Distribution, Inc.**, 312 NLRB 987 (1993); **Queen City Distributing Co., Inc. t/a Sol's**, 272 NLRB 621 (1984); **Ohio Valley Supermarkets, Inc. d/b/a Point Pleasant Foodland**, 269 NLRB 353 (1984); and **Petrie Stores**, *supra*.

relations policies and procedures, including significant control over disciplinary decisions for employees with more than five years of service.

Further, because of the Employer's dovetailed seniority system with all of its ramifications discussed above, the "day-to-day problems and concerns among employees at one" store, are shared by employees who are separately supervised at the other store as regards layoffs, transfers and promotions. **Renzetti's Market, Inc.**, 238 NLRB 174 (1978). Additionally, because of this seniority system, the fortunes of the employees at one store rise and fall based on the fortunes of the employees at the other store. For example, the record evidence discloses that the competitive opening of a new Safeway store within two miles of Store 11, is currently adversely affecting employees in both Greeley stores. Also, I note that the store managers' authority regarding traditional supervisory functions has been proscribed by many of the Employer's corporate policies and procedures. This is not only true as regards discipline, promotions, transfers, and layoffs, but also as to scheduling employees for work as well as time off because of the select-a-shift system. Finally, all wage rates, wage progressions, and annual increases are set at the corporate level. Thus, there is no record evidence that store managers or assistant managers can effect many of the vital areas of interest to employees.

There are approximately 135 unit employees at Store 11 and approximately 115 employees at Store 32.

DIRECTION OF ELECTION⁷

An election by secret ballot shall be conducted by the Undersigned among the employees in the Unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations.⁸

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement

⁷ Because the unit found appropriate is larger than that sought by the Petitioner and because the showing of interest currently provided is inadequate to support an election in the broader unit determined, I will accord the Petitioner a period of fourteen days in which to submit the additional showing of interest necessary to support an election in the unit found appropriate. In the event the Petitioner fails to submit a sufficient showing of interest within the time allowed, the petition will be dismissed, unless it is withdrawn. Should the Petitioner not wish to participate in an election in the unit found appropriate herein, it may withdraw its petition, without prejudice.

⁸ Your attention is directed to Section 103.20 of the Board's Rules and Regulations. Section 103.20 provides that the Employer must post the Board's Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed. Please see the attachment regarding the posting of election notice.

thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

**UNITED FOOD AND COMMERCIAL
WORKERS, LOCAL NO. 7, AFL-CIO**

LIST OF VOTERS⁹

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB v. Wyman-Gordon Company**, 394 U.S. 759 (1969); **North Macon Health Care Facility**, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the **full** names and addresses of all the eligible voters shall be filed by the Employer with the Undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, National Labor Relations Board, 700 North Tower, Dominion Plaza, 600 Seventeenth Street, Denver, Colorado 80202-54533 on or before **September 25, 2003**. No extension of time to file this list shall be granted

⁹ The list of voters shall be made available when, and if, it has been determined that an adequate showing of interest has been established by the Petitioner among the employees in the unit found appropriate.

except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **October 2, 2003**. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

Dated at Denver, Colorado this 18th day of September 2003.

Wayne L. Benson, Acting Regional Director
National Labor Relations Board, Region 27
600 Seventeenth Street
700 North Tower, Dominion Plaza
Denver, Colorado 80202-5433

440-6750-3350